



# California Regulatory Notice Register

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The *California Regulatory Notice Register* is an official state publication of the Office of Administrative Law containing notices of proposed regulatory actions by state regulatory agencies to adopt, amend or repeal regulations contained in the California Code of Regulations. The effective period of a notice of proposed regulatory action by a state agency in the *California Regulatory Notice Register* shall not exceed one year [Government Code § 11346.4(b)]. It is suggested, therefore, that issues of the *California Regulatory Notice Register* be retained for a minimum of 18 months.

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## PROPOSED ACTION ON REGULATIONS

*Information contained in this document is published as received from agencies and is not edited by the Office of State Publishing.*

### TITLE 2. STATE AND CONSUMER SERVICES AGENCY

#### NOTICE OF INTENTION TO AMEND THE CONFLICT-OF-INTEREST CODE OF THE STATE AND CONSUMER SERVICES AGENCY

NOTICE IS HEREBY GIVEN that the State and Consumer Services Agency, pursuant to the authority vested in it by section 87306 of the Government Code, propose amendments to its Conflict-of-Interest Code. The purpose of these amendments is to implement the requirements of sections 87300 through 87302, and section 87306 of the Government Code.

The State and Consumer Services Agency proposes to amend its Conflict-of-Interest Code to include an employee position that is involved in the making or participation in the making of decisions that may foreseeably have a material effect on any financial interest, as set forth in subdivision (a) of section 87302 of the Government Code.

This amendment will add the position of Staff Services Manager as a designated employee and makes other technical changes to reflect the currently organizational structure of the Agency. Copies of the amended code are available and may be requested from the Contact Person set forth below.

Any interested person may submit written statements, arguments, or comments relating to the proposed amendments by submitting them in writing no later than March 10, 2003, or at the conclusion of the public hearing, if requested, whichever comes later, to the Contact Person set forth below.

At this time, no public hearing has been scheduled concerning the proposed amendments. If any interested person or the person's representative requests a public hearing, he or she must do so no later than 15 days before close of the written comment period, by contacting the Contact Person set forth below.

The State and Consumer Services Agency has prepared a written explanation of the reasons for the proposed amendments and has available the information on which the amendments are based. Copies of

the proposed amendments, the written explanation of the reasons, and the information on which the amendments are based may be obtained by contacting the Contact Person set forth below.

The State and Consumer Services Agency has determined that the proposed amendments:

1. Impose no mandate on local agencies or school districts.
2. Impose no costs or savings on any state agency.
3. Impose no costs on any local agency or school district that are required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.
4. Will not result in any nondiscretionary costs or savings to local agencies.
5. Will not result in any costs or savings in federal funding to the state.
6. Will not have any potential impact on private persons, businesses or small businesses.

In making these proposed amendments, the State and Consumer Services Agency must determine that no alternative considered by the Agency would be more effective in carrying out the purpose for which the amendments are proposed or would be as effective and less burdensome to affected persons that the proposed amendments.

All inquiries concerning this proposed amendment and any communication required by this notice should be directed to:

Vickie Ong, Office Administrator  
State and Consumer Services Agency  
915 Capitol Mall, Suite 200  
Sacramento, California 95814  
(916) 653-2636  
vong@scsa.ca.gov

### TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture amended Section 3417, subsection (b), of the regulations in Title 3 of the California Code of Regulations pertaining to Mexican Fruit Fly Interior Quarantine as an emergency action that was effective on December 12, 2002. The Department proposes to continue the regulation as amended and to complete the amendment process by submission of a Certificate of Compliance no later than April 11, 2003.

A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Department no later than 15 days prior to the close of the written comment period. Following the public hearing if one is requested, or following the written comment period if

no public hearing is requested, the Department of Food and Agriculture may certify that there was compliance with provisions of Section 11346.1 of the Government Code within 120 days of the emergency regulation.

Notice is also given that any person interested may present statements or arguments in writing relevant to the action proposed to the agency officer named below on or before March 10, 2002.

#### **INFORMATIVE DIGEST//POLICY STATEMENT OVERVIEW**

Existing law obligates the Department of Food and Agriculture to protect the agricultural industry of California and prevent the spread of injurious pests (Food and Agricultural Code Sections 401 and 403). Existing law provides the Secretary may establish, maintain, and enforce quarantine regulations, as he deems necessary, to circumscribe and exterminate or prevent the spread of pests (Food and Agricultural Code, Sections 5301, 5302 and 5322).

This amendment of Section 3417(b) establishes a quarantine area of approximately 35 square miles surrounding the South Pasadena area of Los Angeles County. The addition of this quarantine area merges with that area surrounding the Monterey Park area (approximately 70 square miles) that is already under quarantine for Mexican fruit fly. There is also an approximate 117 square mile area surrounding the Valley Center area of San Diego County already under quarantine for Mexican fruit fly. The effect of the change is to provide authority for the State to regulate movement of hosts of Mexican fruit fly from, into, and within that area under quarantine to prevent artificial spread of the fly to noninfested areas to protect California's agricultural industry. There is no existing, comparable federal regulation or statute.

#### **COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS**

The Department of Food and Agriculture has determined that Section 3417(b) does not impose a mandate on local agencies or school districts, except that an agricultural commissioner of a county under quarantine has a duty to enforce Section 3417. No reimbursement is required for Section 3417 under Section 17561 of the Government Code because the Agricultural Commissioner of Los Angeles County requested the change in the regulation.

The Department also has determined that the amended regulation will involve no additional costs or savings to any state agency, no reimbursable costs or savings under Part 7 (commencing with Section 17500) of Division 4 of the Government Code to local agencies or school districts, no nondiscretionary costs

or savings to local agencies or school districts, and no costs or savings in federal funding to the State.

#### **EFFECT ON HOUSING COSTS**

The Department has made an initial determination that the proposed action will not affect housing costs.

#### **EFFECT ON BUSINESSES**

The Department has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting some California businesses, including the ability of California businesses to compete with businesses in other states.

#### **COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS**

The cost impact of the amended regulation on a representative private person or business is not expected to be significantly adverse. A representative person or business could incur costs of approximately \$44 per six months in reasonable compliance with the proposed action.

#### **ASSESSMENT**

The Department has made an assessment that the proposed amendment to the regulation would not (1) create or eliminate jobs within California, (2) create new business or eliminate existing businesses within California, or (3) affect the expansion of businesses currently doing business within California.

#### **ALTERNATIVES CONSIDERED**

The Department of Food and Agriculture must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

#### **AUTHORITY**

The Department proposes to amend Section 3417(b) pursuant to the authority vested by Sections 407, 5301, 5302 and 5322 of the Food and Agricultural Code.

#### **REFERENCE**

The Department proposes this action to implement, interpret and make specific Sections 5301, 5302 and 5322 of the Food and Agricultural Code.

#### **EFFECT ON SMALL BUSINESS**

The amendment of this regulation may affect small businesses.

#### **CONTACT**

The agency officer to whom written comments and inquiries about the initial statement of reasons,

proposed action, location of the rulemaking file, request for a public hearing, and final statement of reasons may be directed to: Stephen S. Brown, Department of Food and Agriculture, Plant Health and Pest Prevention Services, 1220 N Street, Room A-316, Sacramento, California 95814, (916) 654-1017, FAX (916) 654-1018, E-mail: [sbrown@cdfa.ca.gov](mailto:sbrown@cdfa.ca.gov). In his absence, you may contact Kris Peebles at (916) 654-1017. Questions regarding the substance of the proposed regulation should be directed to Stephen S. Brown.

#### **INTERNET ACCESS**

The Department has posted the information regarding this proposed regulatory action on its Internet website ([www.cdfa.ca.gov/cdfa/pendingregs](http://www.cdfa.ca.gov/cdfa/pendingregs)).

#### **AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS**

The Department of Food and Agriculture has prepared an initial statement of reasons for the proposed action, has available all the information upon which its proposal is based, and has available the express terms of the proposed action. A copy of the initial statement of reasons and the proposed regulation in underline and strikeout form may be obtained upon request. The location of the information on which the proposal is based may also be obtained upon request. In addition, when completed the final statement of reasons will be available upon request. Requests should be directed to the contact named herein.

If the regulations amended by the Department differ from, but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of amendment. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency officer (contact) named herein.

### **TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE**

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture amended Section 3423, subsection (b), of the regulations in Title 3 of the California Code of Regulations pertaining to Oriental Fruit Fly Interior Quarantine as an emergency action that was effective December 2, 2002. The Department proposes to continue the regulation as amended and complete the amendment process by submission of a Certificate of Compliance no later than April 1, 2003.

A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Department no later than 15 days prior to the close of the written comment

period. Following the public hearing if one is requested, or following the written comment period if no public hearing is requested, the Department of Food and Agriculture may certify that there was compliance with provisions of Section 11346.1 of the Government Code within 120 days of the emergency regulation.

Notice is also given that any person interested may present statements or arguments in writing relevant to the action proposed to the agency officer named below on or before March 10, 2002.

#### **INFORMATIVE DIGEST//POLICY STATEMENT OVERVIEW**

Existing law obligates the Department of Food and Agriculture to protect the agricultural industry of California and prevent the spread of injurious pests (Food and Agricultural Code Sections 401 and 403). Existing law provides the Secretary may establish, maintain, and enforce quarantine regulations, as he deems necessary, to circumscribe and exterminate or prevent the spread of pests (Food and Agricultural Code, Sections 5301, 5302 and 5322).

The amendment of Section 3423(b) establishes a quarantine area of approximately 58 square miles surrounding the La Mirada area of Los Angeles and Orange counties. The effect of the change is to provide authority for the State to regulate movement of hosts of Oriental fruit fly from, into, and within that area under quarantine to prevent artificial spread of the fly to noninfested areas to protect California's agricultural industry. The proposed action does not differ from any existing, comparable federal regulation or statute.

#### **COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS**

The Department of Food and Agriculture has determined that Section 3423 does not impose a mandate on local agencies or school districts, except that an agricultural commissioner of a county under quarantine has a duty to enforce Section 3423. No reimbursement is required for Section 3423 under Section 17561 of the Government Code because the agricultural commissioners of Los Angeles and Orange counties requested the change in the regulation.

The Department also has determined that the amended regulation will involve no additional costs or savings to any state agency, no reimbursable costs or savings under Part 7 (commencing with Section 17500) of Division 4 of the Government Code to local agencies or school districts, no nondiscretionary costs or savings to local agencies or school districts, and no costs or savings in federal funding to the State.



**EFFECT ON HOUSING COSTS**

The Department has made an initial determination that the proposed action will not affect housing costs.

**EFFECT ON BUSINESSES**

The Department has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states.

**COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS**

The cost impact of the amended regulation on a representative private person or business is not expected to be significantly adverse. A representative person or business could incur costs of approximately \$44 per year in reasonable compliance with the proposed action.

**ASSESSMENT**

The Department has made an assessment that the proposed amendments to the regulations would not (1) create or eliminate jobs within California, (2) create new business or eliminate existing businesses within California, or (3) affect the expansion of businesses currently doing business within California.

**ALTERNATIVES CONSIDERED**

The Department of Food and Agriculture must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

**AUTHORITY**

The Department proposes to amend Section 3423(b) pursuant to the authority vested by Sections 407, 5301, 5302 and 5322 of the Food and Agricultural Code.

**REFERENCE**

The Department proposes this action to implement, interpret and make specific Sections 5301, 5302 and 5322 of the Food and Agricultural Code.

**EFFECT ON SMALL BUSINESS**

The amendment of this regulation may affect small businesses.

**CONTACT**

The agency officer to whom written comments and inquiries about the initial statement of reasons, proposed action, location of the rulemaking file, request for a public hearing, and final statement of reasons may be directed is: Stephen S. Brown,

Department of Food and Agriculture, Plant Health and Pest Prevention Services, 1220 N Street, Room A-316, Sacramento, California 95814, (916) 654-1017, FAX (916) 654-1018, E-mail: [sbrown@cdfa.ca.gov](mailto:sbrown@cdfa.ca.gov). In his absence, you may contact Kris Peeples at (916) 654-1017. Questions regarding the substance of the proposed regulations should be directed to Stephen S. Brown.

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If the regulations amended by the Department differ from, but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of amendment. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency officer (contact) named herein.

**GENERAL PUBLIC INTEREST**

**DEPARTMENT OF MOTOR VEHICLES**

**NOTICE OF WRITTEN COMMENT PERIOD**

**Article 3.6. Business Partners**

**Sections 225.00, 225.03, 225.06, 225.09, 225.12, 225.15, 225.18, 225.21, 225.24, 225.27, 225.30, 225.33, 225.36, 225.39, 225.42, 225.45, 225.48, 225.51, 225.54, 225.57, 225.60, 225.63, 225.66, 225.69 and 225.72**

Notice is hereby given that the State Department of Motor Vehicles is extending the period for submission of written comments regarding regulation proposal

Z02-1217-10, Business Partner Automation (BPA) Program, to February 24, 2003, which is hereby designated as the close of the written comment period. All other information contained in the public notice for Z02-1217-10, which was published in the December 27, 2002 California Regulatory Notice Register remains unchanged.

Anyone wishing to receive a copy of the regulation proposal may contact the Regulations Branch at (916) 657-5567 to request a copy. All documents comprising the regulation proposal are posted on the Department of Motor Vehicles web site at <http://www.dmv.ca.gov/about/lad/regactions.htm>.

All inquiries concerning the action described in the regulation proposal may be directed to Christie Patrick of the Regulations Branch at (916) 657-5567, or the designated backup contact person, Deborah Baity, at (916) 657-5690.

## **DEPARTMENT OF MOTOR VEHICLES**

### **NOTICE OF EXTENSION OF WRITTEN COMMENT PERIOD**

#### **Article 3.5. Motor Carrier of Property Permit Program**

**Sections 220.00, 220.02, 220.04, 220.06, 220.8,  
220.10, 220.12, 220.14, 220.16, 220.18, 220.20,  
221.00, 221.02, 221.04, 221.06, 221.08,  
221.10, and 221.12**

Notice is hereby given that the State Department of Motor Vehicles is extending the period for submission of written comments regarding regulation proposal Z02-1217-03, Motor Carrier of Property Permit Program, to February 24, 2003, which is hereby designated as the close of the written comment period. All other information contained in the public notice for Z02-1217-03, which was published in the December 27, 2002 California Regulatory Notice Register remains unchanged.

Anyone wishing to receive a copy of the regulation proposal may contact the Regulations Branch at (916) 657-5567 to request a copy. All documents comprising the regulation proposal are posted on the Department of Motor Vehicles web site at <http://www.dmv.ca.gov/about/lad/regactions.htm>.

All inquiries concerning the action described in the regulation proposal may be directed to Christie Patrick of the Regulations Branch at (916) 657-5567, or the designated backup contact person, Deborah Baity, at (916) 657-5690.

## **CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT**

### **NOTICE TO INTERESTED PARTIES ANNOUNCEMENT OF PUBLIC WORKSHOP AND PUBLIC COMMENT PERIOD**

#### **PUBLIC WORKSHOP: DISCUSSION OF DRAFT REPORT EVALUATION OF POTENTIAL HEALTH EFFECTS OF EATING FISH FROM SELECTED WATER BODIES IN THE NORTHERN SIERRA NEVADA FOOTHILLS (NEVADA, PLACER, AND YUBA COUNTIES): GUIDELINES FOR SPORT FISH CONSUMPTION**

The California Environmental Protection Agency's Office of Environmental Health Hazard Assessment (OEHHA) announces a public workshop to discuss and receive public comments on the draft report entitled Evaluation of Potential Health Effects of Eating Fish from Selected Water Bodies in the Northern Sierra Nevada Foothills (Nevada, Placer, and Yuba Counties): Guidelines for Sport Fish Consumption. To facilitate discussion at the workshop, the draft document is available for preview on OEHHA's Web site. Copies are also available on request from OEHHA at Pesticide and Environmental Toxicology Section, P.O. Box 4010, Sacramento, California 95812-4010 or Pesticide and Environmental Toxicology Section, 1515 Clay St., 16<sup>th</sup> Floor, Oakland, California 94612.

The workshop will be held on February 27, 2003, at Nevada Irrigation District Conference Room at 1036 West Main Street, Grass Valley. It will begin at 2:00 p.m. and last until all business has been conducted or until 3:30 p.m.

The report represents an evaluation of findings on mercury in fish from Camp Far West Reservoir, Lake Combie, Lake Englebright, Rollins Reservoir, Scotts Flat Reservoir, and portions of the South Yuba River, Deer Creek, and Bear River, and provides guidelines for limiting consumption of fish from these water bodies in Nevada, Placer, and Yuba Counties. The workshop will be conducted in accordance with Health and Safety Code Section 57003(a) to provide information and promote public input in the development of fish consumption guidelines for these water bodies.

A copy of the report is available at the Internet Web site of OEHHA, <http://www.oehha.ca.gov>, or by calling OEHHA at (916) 327-7319.

Written comments may be submitted at the workshop or to the address below. Comments must be postmarked (if sent by mail) or received by OEHHA

(if hand-delivered or sent by FAX) by close of business on February 27, 2003.

Following the workshop, OEHHA will revise the report, as appropriate, post it on the Web site, and provide a 30-day public comment period. The public comment period will be announced in the California Regulatory Notice Register. The report and advisory will then be finalized after considering all the comments received.

If you would like to receive further information on this workshop, or have questions, please contact Dr. Robert Brodberg using the information provided below.

Dr. Robert K. Brodberg  
California Environmental Protection Agency  
Office of Environmental Health Hazard Assessment  
Pesticide and Environmental Toxicology Section  
P.O. Box 4010  
Sacramento, California 95812-4010  
Phone: (916) 323-4763  
Fax: (916) 327-7320

## **DECISION NOT TO PROCEED**

### **DEPARTMENT OF CONSUMER AFFAIRS**

#### **NOTICE OF DECISION NOT TO PROCEED WITH RULEMAKING ACTION**

The Department of Consumer Affairs has decided not to proceed with its rulemaking action described in the Notice published in the California Regulatory Notice Register on December 13, 2002, OAL File # Z02-1203-09, concerning Title 16, section 3830 (Conflict of Interest Code Regulations). Therefore, the regulatory hearing scheduled on January 27, 2003 at 9:00 a.m. at the DCA Hearing Room, 400 R Street, Suite 1030, Sacramento, California 95814, is hereby cancelled.

## **RULEMAKING PETITION DECISIONS**

### **BOARD OF FORESTRY AND FIRE PROTECTION**

#### **PETITION FOR RULE ADOPTION, AMENDMENT OR REPEAL PETITIONER**

Charles L. Ciancio  
Registered Professional Forester No. 317

On November 18, 2002 the petitioner, Charles L. Ciancio, submitted a petition requesting the amendment, under Government Code (GC) § 11340.6, of existing forest practice regulations contained in the Forest Practice Rules, set forth in Title 14 of the California Code of Regulations (14 CCR), section 895 et seq. The petition was extensively supplemented with additional written materials on January 7, 2003.

The petition, as supplemented, requested that the State Board of Forestry and Fire Protection (Board) amend Forest Practice Rules section 1033 ("Filing Date") and 1034 ("Contents of Plan"). (14 CCR §§ 1033, 1034) By mutual agreement, the petition was heard before Board on January 7, 2003, in Sacramento, California. Testimony was received from the petitioner, the Department of Forestry and Fire Protection, and the public. The Board considered the petition and testimony received, and the written response to the petition submitted by the Department of Forestry and Fire Protection, and rendered a decision.

The Board denied the petition for the following reasons:

1. The Board determined that the petitioned amendment of 14 CCR § 1033 was unclear. Rulemaking language generally must have "clarity", (GC § 11349(c)), and petitions for the adoption or repeal must themselves be clear and concise. (GC § 11340.6)
2. The Board further determined that the petitioned amendment of 14 CCR § 1034 was unnecessary and unclear. Rulemaking language generally must reflect "necessity" and possess "clarity", (GC §§ 11349(a),(c)), and petitions for adoption or repeal must themselves be clear and concise. (GC § 11340.6)

#### **DECISION**

1. The rulemaking petition submitted by Charles L. Ciancio is denied by the Board pursuant to its authority under GC § 11340.7.
2. Board staff will distribute the current Timber Harvesting Plan form to all Board members for a subsequent review in the Board's Interim Committee.
3. The Board's Interim Committee will discuss the issue of whether it is appropriate for the Department to reject a Timber Harvesting Plan for filing solely on a discretionary basis or whether it is appropriate to accept a Timber Harvesting Plan for filing and address discretionary issues in the formal Departmental review process which follows.

Interested persons may obtain a copy of the petition through the office of the State Board of Forestry and



Fire Protection at Post Office Box 944246, Sacramento, California 94244-2460, (916) 653-8007.

This Decision is effective on January 7, 2003.

## SUMMARY OF REGULATORY ACTIONS

### REGULATIONS FILED WITH SECRETARY OF STATE

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA, 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

#### BOARD OF EDUCATION

##### Reclassification of English Learners

The proposed regulatory action implements Initiative Measure, Proposition 227 (eff. June 3, 1998) by consolidating and modifying regulations governing English language learner instruction. This action is the resubmittal of previously withdrawn OAL file number 02-0724-02S.

Title 5

California Code of Regulations

ADOPT: 11303, 11304, 11305, 11306, 11307, 11308, 11316 AMEND: 11303, 11304, 11305

REPEAL: 4304, 4306, 4311, 4312

Filed 01/08/03

Effective 02/07/03

Agency Contact: Debra Strain (916) 319-0641

#### BOARD OF EQUALIZATION

##### Unitary & Nonunitary Property Value Determinations and Petitions for Reassessment

This nonsubstantive regulatory action concerns deadlines to file petitions for reassessment of Unitary and Nonunitary Property Value Determinations and Petitions for Reassessment and petitions for correction of an allocated assessment. These regulatory changes are necessary to conform to the deadlines given in Revenue and Taxation Code sections 731, 732, and 746.

Title 18

California Code of Regulations

AMEND: 904

Filed 01/15/03

Effective 01/15/03

Agency Contact: Diane G. Olson (916) 322-9569

#### BOARD OF EQUALIZATION

##### Taxable Possessory Interests—Valuation

This nonsubstantive filing would amend 21(e)(1)(A) by adding a comma after the word “created” to separate the words, “. . . created extended, or renewed. . .” in order to properly punctuate them as individual words in a series.

Title 18

California Code of Regulations

AMEND: 21(e)(1)(A)

Filed 01/14/03

Effective 01/14/03

Agency Contact: Diane G. Olson (916) 322-9569

#### CALIFORNIA ARCHITECTS BOARD

##### Filing of Applications

This action amends provisions governing candidate eligibility for the architect licensing examination including the addition of provisions governing the Intern Development Program (IDP) and the Intern Architect Program (IAP) of Canada.

Title 16

California Code of Regulations

ADOPT: 118.5 AMEND: 109, 116, 117, 121

Filed 01/15/03

Effective 02/14/03

Agency Contact: Betsy Figueira (916) 324-9919

#### DEPARTMENT OF CORRECTIONS

##### Public Records

The regulatory action establishes a fee of twelve cents per page plus postage to duplicate and mail a public record.

Title

California Code of Regulations

ADOPT: 3260.1

Filed 01/13/03

Effective 02/12/03

Agency Contact: Cassie Mraz (916) 324-6776

#### DEPARTMENT OF DEVELOPMENTAL SERVICES

##### Early Intervention Services

In this regulatory action, the Department of Developmental Services amends its regulations pertaining to the “Early Intervention Services” program which provides services to infants and toddlers and their families related to infant and toddler development. The amendments are primarily being made to conform California’s program regulations to federal regulations in this area.

Title 17

California Code of Regulations

AMEND: 52000, 52082, 52084, 52109, 52170, 52171, 52173, 52175

Filed 01/14/03

Effective 02/13/03

Agency Contact: John Ellis (916) 654-2190

**DEPARTMENT OF DEVELOPMENTAL SERVICES**  
**Miscellaneous Cleanup**

This is a nonsubstantive action which makes editorial changes, such as correcting typos and updating section number references within the text. The changes are without regulatory effect pursuant to title 1, section 100 of the California Code of Regulations.

**Title 17****California Code of Regulations**

AMEND: 50413, 50425, 50753, 50766, 50810, 54355, 57210, 57433, 58033

Filed 01/14/03

Effective 01/14/03

Agency Contact:

Leslie R. Carmona (916) 654-3657

**DEPARTMENT OF HEALTH SERVICES****Phlebotomy Certification Standards**

This action implements Chapter 695, Statutes of 1999, AB 1557 (Migden), which responded to the 1999 Santa Clara County incident in which a phlebotomist was reusing needles and engaged in other unprofessional practices. AB 1557 directed the Department to establish a certification program for phlebotomists working for clinical labs or public health entities and who are not otherwise licensed health professionals. The Department created three certification levels—"Limited" for skin punctures only, Level I for skin and vein (venipuncture) punctures, and Level II which also includes arterial punctures. The Department also established standards for approval of instructors, curriculum, and certifying organizations permitted to give examinations, as well as application and renewal processes.

**Title 17****California Code of Regulations**

ADOPT: 1029.31, 1029.32, 1029.33, 1029.34, 1029.108, 1029.116, 1029, 124, 1029.132, 1029.133, 1029.154, 1029.195, 1031.7, 1034, and 1035.1 AMEND: 1031.4, 1031.5 REPEAL: 1034, 1034.1

Filed 01/09/03

Effective 04/09/03

Agency Contact:

Charles E. Smith (916) 657-0730

**DEPARTMENT OF INSURANCE****California Low Cost Automobile Insurance Program**

The proposed emergency action would amend the California Low Cost Automobile Insurance Program Plan of Operations to provide rates for optional uninsured motorist and medical payment coverage. The California Low Cost Automobile Insurance Program is a statutorily required plan for the equitable apportionment, among insurers required to participate

in the California Automobile Assigned Risk Plan, of persons residing in the County of Los Angeles and the City and County of San Francisco who are eligible to purchase a low cost automobile insurance policy through the pilot program established in those counties.

**Title 10****California Code of Regulations**

ADOPT: 2498.6

Filed 01/13/03

Effective 01/13/03

Agency Contact:

Mary Ann Shulman (415) 538-4133

**DEPARTMENT OF SOCIAL SERVICES****Foster Care Financial Audit Requirements**

This regulatory action amends the audit requirements for group homes and foster family agency providers.

**Title MPP****California Code of Regulations**

ADOPT: 11-404, 11-406 AMEND: 11-400, 11-402, 11-403, 11-405

Filed 01/14/03

Effective 02/13/03

Agency Contact:

Anthony J. Velasquez (916) 657-2586

**DEPARTMENT OF SOCIAL SERVICES****Electronic Benefit Transfer (EBT) Benefit Adjustments**

This is the certification of compliance for an APA exempt emergency action that established time limits and procedures for processing requests for adjustments to electronic transfer of food stamp and cash assistance benefits, and for requesting a hearing concerning such adjustments.

**Title MPP****California Code of Regulations**

ADOPT: 16-705

Filed 01/14/03

Effective 01/14/03

Agency Contact:

Anthony J. Velasquez (916) 657-2586

**DIVISION OF WORKERS COMPENSATION****Health Care Organizations**

The regulatory action deals with workers' compensation Health Care Organizations.

**Title 8****California Code of Regulations**

AMEND: 9771, 9771.2, 9771.66, 9772, 9779, 9779.1, 9779.3, 9779.4, 9779.45

Filed 01/09/03

Effective 01/09/03

Agency Contact: James Robbins (415) 703-4600

**EMERGENCY MEDICAL SERVICES AUTHORITY**  
**Layperson Automated External Defibrillation**

The regulatory action deals with training standards and utilization for use of the automated external defibrillator by non-licensed or non-certified personnel.

Title 22

California Code of Regulations

ADOPT: 100040, 100041, 100031, 100039, 100042, 100043, AMEND: 100031, 100032, 100033, 10034, 100035, 100036, 100038, 100040, 100041 REPEAL: 100037, 100039, 100043

Filed 01/13/03

Effective 02/12/03

Agency Contact: Sean Trask (916) 322-4336

**FAIR POLITICAL PRACTICES COMMISSION**  
**Contributions Between State Candidates**

This filing would make permanent the emergency regulation section 18531.7 of Title 2 of the California Code of Regulations dealing with restrictions on contributions between state candidates.

Title 2

California Code of Regulations

ADOPT: 18535

Filed 01/08/03

Effective 01/08/03

Agency Contact: Hyla Wagner (916) 322-5660

**FISH AND GAME COMMISSION**

**Nearshore Fishery Management Plan Implementing Regulations**

The Marine Life Management Act of 1998 (MLMA) authorizes the Fish and Game Commission (Commission) to adopt regulations necessary to regulate nearshore fish stocks and fisheries and to adopt a nearshore fisheries management plan by January 1, 2002. This regulatory action implements the nearshore fisheries management plan adopted by the Commission on August 29, 2002.

Title 14

California Code of Regulations

ADOPT: 52.00, 52.01, 52.02, 52.03, 52.04, 52.05, 52.09 AMEND: 150.16, 150.17

Filed 01/09/03

Effective 02/08/03

Agency Contact: John M. Duffy (916) 653-4899

**FRANCHISE TAX BOARD**

**Tax Clearance Certificate**

In this regulatory action, the Franchise Tax Board amends its Corporation Franchise Tax regulation pertaining to Tax Clearance Certificates. Tax Clearance Certificates are generally required for certain corporate filings with the Secretary of State and in other instances pursuant to Revenue and Taxation Code section 23334.

Title 18

California Code of Regulations

AMEND: 23334

Filed 01/09/03

Effective 02/08/03

Agency Contact:

Colleen Berwick (916) 845-3306

**INDUSTRIAL MEDICAL COUNCIL**

**Workers' Compensation Evaluation Protocols**

This action adopts guidelines for the medical evaluation of foot and ankle injuries.

Title 8

California Code of Regulations

ADOPT: 46.1

Filed 01/08/03

Effective 02/07/03

Agency Contact:

James D. Fisher (650) 737-2049

**OCCUPATIONAL SAFETY AND HEALTH**  
**STANDARDS BOARD**

**Variances from Occupational Safety & Health Standards Appeals from Temporary Variance Decisions**

This action amends the Board's procedural rules governing hearings and appeals concerning temporary and permanent variances.

Title 8

California Code of Regulations

ADOPT: 412.2 AMEND: 403, 404, 405.1, 411, 411.1, 411.2, 418, 420 REPEAL: 407, 407.1, 407.2, 407.3,

Filed 01/09/03

Effective 02/08/03

Agency Contact: Marley Hart (916) 274-5721

**OCCUPATIONAL SAFETY AND HEALTH**  
**STANDARDS BOARD**

**Boiler Installation**

This action would amend the provision containing boiler installation standards to would reference the 2001 California Building Code as effective for boiler installation and/or relocation building permits issued on or after November 1, 2002..

Title 8

California Code of Regulations

AMEND: 769

Filed 01/09/03

Effective 02/08/03

Agency Contact: Marley Hart (916) 274-5721

**STATE ALLOCATION BOARD**

**State School Deferred Maintenance Program**

This regulatory action conforms the School Deferred Maintenance Program regulations to recent changes in statute.

Title 2

California Code of Regulations

ADOPT: 1866.4.1, 1866.4.2, 1866.4.3, 1866.4.4, 1866.4.6, 1866.4.7, 1866.5.1, 1866.5.2, 1866.5.4, 1866.5.5, 1866.5.6, 1866.5.7, 1866.5.8, 1866.9.1, 1866.12, 1866.13, 1866.14 AMEND: 1866, 1866.1, 1866.2, 1866.3, 1866.4, 1866.5, 1866.5.3, 1866.7, 1866.8, 186

Filed 01/13/03

Effective 01/13/03

Agency Contact: Lisa Jones (916) 322-1043

**STATE WATER RESOURCES CONTROL BOARD  
TMDL for sedimentation/siltation in the New River**

Regional Board Resolution No.1 R-7-2002-0097, adopted on June 26, 2002, by the Colorado River Basin Regional Water Quality Control Board, establishes a Total Maximum Daily Load (TMDL) of 127,881 tons/year for sedimentation/siltation in the New River. The implementation plan requires the farmers/operators in the New River subwatershed to implement best management practices to reduce silt/sediment delivery into the New River, in accordance with a four phase time schedule. Each phase consists of a three year period, with interim load reductions for each phase. Implementation does not take place until one year after approval of the TMDL by the U.S. Environmental Protection Agency. It also requires the Imperial Irrigation District to submit and implement a revised drain water quality improvement plan, with a monitoring program, for the drains discharging into the new river. The TMDL requires a net reduction of 17% of sediment/silt in the New River.

Title 23

California Code of Regulations

ADOPT: 3963

Filed 01/13/03

Effective 01/13/03

Agency Contact: Joanne Cox (916) 341-5552

**CCR CHANGES FILED WITH THE  
SECRETARY OF STATE  
WITHIN SEPTEMBER 11, 2002 TO  
JANUARY 15, 2003**

All regulatory actions filed by OAL during this period are listed below by California Code of Regulation's titles, then by date filed with the Secretary of State, with the Manual of Policies and Procedures changes adopted by the Department of Social Services listed last. For further information on a particular file, contact the person listed in the Summary of Regulatory Actions section of the Notice Register published on the first Friday more than nine days after the date filed.

Title 1

10/29/02 AMEND: 1, 100

Title 2

01/13/03 ADOPT: 1866.4.1, 1866.4.2, 1866.4.3, 1866.4.4, 1866.4.6, 1866.4.7, 1866.5.1, 1866.5.2, 1866.5.4, 1866.5.5, 1866.5.6, 1866.5.7, 1866.5.8, 1866.9.1, 1866.12, 1866.13, 1866.14 AMEND: 1866, 1866.1, 1866.2, 1866.3, 1866.4, 1866.5, 1866.5.3, 1866.7, 1866.8, 186

01/08/03 ADOPT: 18535

12/19/02 ADOPT: 1859.200, 1859.201, 1859.202, 1859.203, 1859.204, 1859.205, 1859.206, 1859.207, 1859.208, 1859.209, 1859.210, 1859.211, 1859.212, 1859.213, 1859.214, 1859.215, 1859.216, 1859.217, 1859.218, 1859.218, 1859.219, 1859.220,

12/17/02 ADOPT: 599.723.2

12/10/02 ADOPT: 58700

11/26/02 AMEND: 57.1

11/18/02 AMEND: 589, 589.3, 589.4, 589.5, 589.9

11/14/02 AMEND: 2271

11/04/02 ADOPT: 1859.70.1, 1859.71.3, 1859.78.5, 1859.78.6, 1859.78.7, 1859.93.1, 1859.120, 1859.121, 1859.122, 1859.122.1, 1859.122.2, 1859.123, 1859.124, 1859.124.1, 1859.125, 1859.125.1, 1859.126, 1859.127, 1859.128, 1859.129, 1859.130, 1859.140, 1859.141, 1859

11/04/02 ADOPT: 549.95

10/31/02 ADOPT: 18531.7

10/31/02 AMEND: 51000

10/24/02 ADOPT: 2351

10/09/02 AMEND: 18539.2

10/04/02 AMEND: 1859.81, 1859.91

10/04/02 ADOPT: 18544

09/16/02 AMEND: 1859.79, 1859.79.3, 1859.81.1, 1859.83, 1859.107

09/12/02 AMEND: 18110, 18401, 18404.1, 18451, 18540, 18705.4, 18997

Title 3

01/06/03 AMEND: 1380.19(l), 1428.17, 1436.37

12/24/02 ADOPT: 1392.12

12/12/02 AMEND: 3417(b)

12/12/02 AMEND: 3417(b)

12/12/02 AMEND: 3423(b)

12/10/02 AMEND: 3700(b)

12/05/02 AMEND: 6550

12/03/02 AMEND: 6622

12/02/02 AMEND: 3423(b)

12/02/02 AMEND: 1392.1, 1392.2, 1392.4, 1392.9.1

11/12/02 ADOPT: 4600, 4601, 4602, 4603

11/07/02 AMEND: 6000, 6710

11/01/02 AMEND: 3417(b)



10/28/02 AMEND: 3604(b)  
 10/24/02 AMEND: 1380.19, 1430.10, 1430.12,  
 1430.14, 1430.26, 1430.27, 1430.32,  
 1430.45, 1430.50, 1430.51  
 10/17/02 ADOPT: 3650, 3651, 3652, 3653, 3654,  
 3655, 3656, 3657, 3658, 3659, 3660,  
 3661, 3662, 3663, 3663.5  
 10/09/02 AMEND: 1380.19(h), 1420.10, 1442.7  
 REPEAL: 1420.9, 1442.10  
 09/19/02 ADOPT: 6450, 6450.1, 6450.2, 6450.3,  
 6784 AMEND: 6000 REPEAL: 6450,  
 6450.1, 6450.2, 6450.3, 6784

**Title 4**

12/12/02 ADOPT: 12100, 12101, 12104, 12105,  
 12120, 12122, 12124, 12126, 12128,  
 12130, 12132, 12140, 12142  
 12/05/02 ADOPT: 12309, 12310 AMEND:  
 12300, 12301, 12302, 12303, 12305  
 10/15/02 ADOPT: 1867  
 10/07/02 ADOPT: 12300, 12301, 12302, 12303,  
 12304, 12305, 12306, 12307, 12308  
 09/12/02 ADOPT: 8110, 8111, 8112, 8113, 8114,  
 8115, 8116, 8117, 8118, 8119, 8120,  
 8121, 8122, 8123, 8124, 8125

**Title 5**

01/08/03 ADOPT: 11303, 11304, 11305, 11306,  
 11307, 11308, 11316 AMEND: 11303,  
 11304, 11305 REPEAL: 4304, 4306,  
 4311, 4312  
 12/23/02 AMEND: 80054.5, 80020.4.1  
 12/10/02 ADOPT: 11983.5  
 12/09/02 AMEND: 80054  
 12/05/02 AMEND: 30950, 30951, 30951.1, 30952,  
 30953, 30954, 30955, 30956, 30957,  
 30958, 30959  
 10/21/02 AMEND: 18301  
 10/17/02 ADOPT: 80434 AMEND: 80001  
 09/30/02 AMEND: 42933  
 09/30/02 AMEND: 42356

**Title 8**

01/09/03 AMEND: 9771, 9771.2, 9771.66, 9772,  
 9779, 9779.1, 9779.3, 9779.4, 9779.45  
 01/09/03 ADOPT: 412.2 AMEND: 403, 404,  
 405.1, 411, 411.1, 411.2, 418, 420 RE-  
 PEAL: 407, 407.1, 407.2, 407.3,  
 01/09/03 AMEND: 769  
 01/08/03 ADOPT: 46.1  
 01/06/03 AMEND: 1527  
 01/03/03 AMEND: 344.30  
 12/30/02 AMEND: 14300.10, 14300.12, 14300.29  
 12/30/02 ADOPT: 10114.1, 10114.2, 10114.3,  
 10114.4, 101002, 10103.2, 10106.1,  
 10107.1, 10111.2, 10113.1, 10113.2,

10113.3, 10113.4, 10113.5, 10113.6  
 AMEND: 10104, 10105, 10106.5, 10108,  
 10109, 10113, 10114, 10115.1 REPEAL:  
 10115.3

12/19/02 AMEND: 5221, 5223,  
 12/03/02 AMEND: 4794, 4848, 4850  
 12/02/02 AMEND: 3441(a)  
 11/18/02 ADOPT: 2980, 2981, 2982, 2983  
 10/01/02 AMEND: 3457(b)  
 09/25/02 AMEND: 451, 527  
 09/19/02 AMEND: 14004, 14005  
 09/12/02 AMEND: 1671.2

**Title 9**

01/02/03 AMEND: 10355  
 12/26/02 ADOPT: 7149.1 AMEND: 7174  
 11/26/02 ADOPT: 9526, 9531 AMEND: 9500,  
 9505, 9515, 9530, 9535

**Title 10**

01/13/03 ADOPT: 2498.6  
 01/02/03 AMEND: 2509.40, 2509.41, 2509.42,  
 2509.45, 2509.77  
 12/31/02 AMEND: 2318.6, 2353.1, and 2354.  
 12/26/02 ADOPT: 2278, 2278.1, 2278.2, 2278.3,  
 2278.5  
 12/16/02 ADOPT: 1422, 1423  
 12/12/02 AMEND: 2632.8  
 12/12/02 ADOPT: 2699.6606, 2699.6711,  
 2699.6631, 2699.6717 AMEND:  
 2699.6500, 2699.6600, 2699.6605,  
 2699.6607, 2699.6611, 2699.6613,  
 2699.6617, 2699.6623, 2699.6625,  
 2699.6629, 2699.6631, 2699.6700,  
 2699.6703, 2699.6705, 2699.6709,  
 2699.6800, 2699.6801, 2699.680  
 12/05/02 AMEND: 2632.13(c)  
 11/22/02 ADOPT: 2689.1, 2689.2, 2689.3, 2689.4,  
 2689.5, 2689.6, 2689.7, 2689.8, 2689.9,  
 2689.10, 2689.11, 2689.12, 2689.13,  
 2689.14, 2689.15, 2689.16, 2689.17,  
 2689.18, 2689.19, 2689.20, 2689.21,  
 2689.22, 2689.23, 2689.24,  
 11/19/02 ADOPT: 2542, 2542.1, 2542.2, 2542.3,  
 2542.4, 2542.5, 2542.6, 2542.7, and  
 2542.8  
 11/18/02 ADOPT: 2187.4  
 11/14/02 AMEND: 5002  
 11/07/02 ADOPT: 2193, 2193.1, 2193.2 2193.3  
 11/04/02 ADOPT: 2698.99  
 10/31/02 ADOPT: 2632.13  
 10/16/02 ADOPT: 2660 AMEND: 2646.2, 2648.4,  
 2651.1, 2652.5, 2655.1, 2655.5, 2655.6,  
 2655.10, 2656.1, 2656.2, 2656.3, 2656.4,  
 2657.2, 2658.1, 2659.1, 2661.3, 2697.3  
 09/25/02 AMEND: 250.9.1(a), 250.12(a), 250.51,  
 350.60(a), 260.001, 260.100.1,  
 260.100.3, 260.102.4(b), 260.102.8(b),

260.102.16, 260.103, 260.105.28,  
260.105.33, 260.111, 260.112, 260.113,  
260.121, 260.131, 260.140.71.2,  
260.140.87(e), 260.140.110.2, 260.140.11  
09/25/02 ADOPT: 2698.90, 2698.91  
09/19/02 AMEND: 2851, 2851.1

**Title 11**

12/04/02 ADOPT: 977.52 AMEND: 977.20,  
977.43, 977.44, 977.45, 977.50, 977.51  
12/03/02 AMEND: 1001, 1010 REPEAL: 1009  
11/26/02 AMEND: 1005  
10/10/02 ADOPT: 435, 436, 437, 438, 439, 440,  
441, 442, 443, 444, 445, 446, 447, 448,  
449, 450, 451, 452, 453, 454, 455, 456,  
457, 458, 459, 460, 461, 462, 463, 464,  
465, 466, 467, 468, 469, 470, 471, 472,  
473, 474, 475, 476, 477, 478, 479, 480,  
481, 482, 483, 48  
10/07/02 ADOPT: 1012 AMEND: 1001, 1004,  
1005, PAM D-13 REPEAL: former 1005  
09/18/02 ADOPT: 61.8

**Title 13**

01/03/03 ADOPT: 2606 AMEND: 2601, 2602,  
2603, 2604, 2605, 2606, 2607, 2608,  
2609, 2610  
12/24/02 AMEND: 2261, 2262, 2262.4, 2262.5,  
2262.6, 2262.9, 2265, 2266.5, 2269,  
2271, 2272, 2296  
11/25/02 AMEND: 810, 811, 812, 813, 814, 815,  
816, 817, 818  
11/04/02 ADOPT: 225.00, 225.03, 225.06, 225.09,  
225.12, 225.15, 225.18, 225.21, 225.24,  
225.27, 226.30, 225.33, 225.36, 225.39,  
225.41, 225.45, 225.48, 225.51, 225.54,  
225.57, 225.60, 225.63, 225.66, 225.69,  
225.72, and related forms  
10/18/02 AMEND: 1956.8  
09/16/02 AMEND: 1960.1, 1960.5, 1961, 1962,

**Title 13, 17**

09/12/02 ADOPT: 1969, 60060.1, 60060.2,  
60060.3, 60060.4, 60060.5, 60060.6,  
60060.7

**Title 14**

01/09/03 ADOPT: 52.00, 52.01, 52.02, 52.03,  
52.04, 52.05, 52.09 AMEND: 150.16,  
150.17  
01/07/03 AMEND: 630  
01/03/03 ADOPT: 1.91 AMEND: 1.90, 27.60,  
27.82, 28.27, 28.28, 28.29, 28.54, 28.55,  
28.58  
12/31/02 AMEND: 150.06(a)  
12/30/02 AMEND: 670.2  
12/30/02 AMEND: 150.16  
12/30/02 AMEND: 150.06, 150.16  
12/26/02 AMEND: 670.2

12/19/02 AMEND: 11900 and 11901  
12/19/02 AMEND: 11900  
12/18/02 ADOPT: 3704.1  
12/05/02 AMEND: 18419  
12/03/02 AMEND: 2200, 2320, 2500  
11/25/02 AMEND: 895.1, 929.1, [949.1, 969.1],  
929.2, [949.2, 969.2], 929.3, [949.3,  
969.3], 929.4, [949.4, 969.4] REPEAL:  
929.5, [949.5, 969.5], 1037.5(a), 1052  
11/25/02 AMEND: 912.7, 932.7, 952.7  
11/21/02 AMEND: 791.7, 870.15, 870.17, 870.19,  
870.21 and incorporated by reference  
form FG-OSPR -1972  
11/21/02 AMEND: 1038(f)  
11/18/02 AMEND: 2090, 2105, 2420, 2425, 2530  
and 2690 renumbered to 2850  
11/18/02 AMEND: 932.9, 952.9  
11/14/02 AMEND: 895.1, 912.7, 913.1, 913.2,  
932.7, 933.1, 933.2, 952.7, 953.1, 953.2  
11/07/02 AMEND: 7.50(b)(5)(E), 7.50(b)(156)(H)  
11/07/02 ADOPT: 749.2  
10/28/02 ADOPT: 4971  
10/28/02 AMEND: 1058.5  
10/24/02 ADOPT: 17211, 17211.1, 17211.2,  
17211.3, 17211.4, 17211.5, 17211.6,  
17211.7, 17211.8, 17211.9  
10/21/02 AMEND: 163, 163.5, 164  
10/15/02 AMEND: 2030  
10/09/02 ADOPT: 819.06, 819.07 AMEND:  
815.03, 815.05, 817.02, 817.03, 818.02,  
818.03, 819, 819.01, 819.02.8, 19.03,  
819.04, 819.05  
10/09/02 AMEND: 502, 507(c)  
10/08/02 AMEND: 2135  
10/03/02 ADOPT: 3810, 3811, 3812, 3813, 3814,  
3815, 3816, 3817  
10/03/02 AMEND: 3502  
10/01/02 AMEND: 3650, 3652, 3653, 3655, 3656,  
3658  
10/01/02 ADOPT: 3940, 3941, 3942, 3943, 3944,  
3945, 3946, 3947, 3948  
09/30/02 AMEND: 17400, 17402, 17402.5  
09/30/02 AMEND: 3901, 3909, 3910  
09/19/02 AMEND: 3626, 3627, 3628  
09/18/02 AMEND: 300(a) REPEAL: 502.1  
09/12/02 ADOPT: 105.5 REPEAL: 195  
09/12/02 AMEND: 120.3

**Title 15**

12/10/02 ADOPT: 3371.1  
10/04/02 AMEND: 3025, 3315  
09/30/02 AMEND: 3006

**Title 16**

01/15/03 ADOPT: 118.5 AMEND: 109, 116, 117,  
121  
01/07/03 AMEND: 1399.660, 1399.664  
01/06/03 AMEND: 1399.85

12/31/02 ADOPT: 811  
 12/24/02 AMEND: 1399.25, 1399.26, 1399.27, 1399.28, 1399.29  
 12/24/02 REPEAL: 1382.1  
 12/23/02 AMEND: 1399.10, 1399.12  
 12/23/02 REPEAL: 1387, 1387.3, and 1387.5  
 12/23/02 ADOPT: 1398.52 AMEND: 1398.37  
 12/19/02 AMEND: 1398.3, 1398.20, 1398.21.1, 1398.28, 1398.42, 1398.47, 1399.12, 1399.20, 1399.21, 1399.22, 1399.52  
 12/16/02 ADOPT: 1435.15 AMEND: 1435, 1435.2, 1435.3, 1435.5, 1435.6  
 12/16/02 ADOPT: 1937.17 AMEND: 1996, 1996.2  
 12/12/02 AMEND: 2310(a)(b)  
 12/09/02 ADOPT: 2414 AMEND: 2411, 2418  
 12/03/02 AMEND: 1690, 1691 REPEAL: 1680, 1681, 1682  
 10/23/02 ADOPT: 1777, 1777.1, 1777.2, 1777.3, 1777.4, 1777.5, 1778, 1778.1, 1778.2, 1778.3  
 10/08/02 AMEND: 308  
 10/02/02 ADOPT: 306.3  
 09/24/02 AMEND: 1999.5  
 09/23/02 AMEND: 306.2  
 09/13/02 AMEND: 1811  
 09/11/02 ADOPT: 1706.5, Article 5, Article 6, Article 7, Article 8, Article 10, Article 10.1. AMEND: 1703, 1704, 1705, 1706, 1706.1, 1707.1, 1707.3, 1708.2, 1708.3, 1708.4, 1709, 1710, 1715.6, 1716, 1716.1, 1716.2, 1717, 1717.1, 1717.2, 1717.4, 1718, 1718.1, 171

**Title 17**

01/14/03 AMEND: 52000, 52082, 52084, 52109, 52170, 52171, 52173, 52175  
 01/14/03 AMEND: 50413, 50425, 50753, 50766, 50810, 54355, 57210, 57433, 58033  
 01/09/03 ADOPT: 1029.31, 1029.32, 1029.33, 1029.34, 1029.108, 1029.116, 1029, 124, 1029.132, 1029.133, 1029.154, 1029.195, 1031.7, 1034, and 1035.1 AMEND: 1031.4, 1031.5 REPEAL: 1034, 1034.1  
 12/19/02 AMEND: 57332  
 12/05/02 AMEND: 58420  
 12/02/02 AMEND: 6508  
 11/12/02 AMEND: 94006  
 10/29/02 AMEND: 54000, 54001  
 10/08/02 AMEND: 93105(a)(1)  
 09/24/02 AMEND: 6020, 6025, 6035, 6050, 6051, 6065, 6070, 6075

**Title 18**

01/15/03 AMEND: 904  
 01/14/03 AMEND: 21(e)(1)(A)  
 01/09/03 AMEND: 23334  
 12/10/02 AMEND: 17951-1, 17952, 180001-1 REPEAL: 17554

12/10/02 AMEND: 1502  
 12/10/02 AMEND: 1703  
 12/10/02 ADOPT: 1535  
 12/03/02 AMEND: 1525.2  
 12/02/02 REPEAL: 24348(b)  
 10/08/02 AMEND: 24344(c)  
 09/19/02 AMEND: 305.1

**Title 19**

12/19/02 AMEND: 2900, 2910, 2915, 2925, 2930, 2940, 2945, 2955, 2965, 2970, 2980, 2990  
 11/21/02 AMEND: 557.9, 560, 567, 574.6, 575.3, 575.4(a), 578.10, 594.3, 594.5, 595.5, 596, 596.1, 596.2, 596.3  
 10/21/02 AMEND: 981.3(a)(b)(d)  
 10/10/02 ADOPT: 2735.3(rr), 2770.4.1 AMEND: 2735.3(rr) to (zz), 2770.5  
 09/12/02 ADOPT: 2575, 2575.1, 2575.2, 2576, 2576.1, 2577, 2577.1, 2577.2, 2577.3, 2577.4, 2577.5, 2577.6, 2577.7, 2577.8, 2578, 2578.1, 2578.2, 2578.3  
 09/12/02 ADOPT: 2575, 2575.1, 2575.2, 2576, 2576.1, 2577, 2577.1, 2577.2, 2577.3, 2577.4, 2577.5, 2577.6, 2577.7, 2577.8, 2578, 2578.1, 2578.2

**Title 20**

10/28/02 ADOPT: 1601, 1602, 1602.1, 1603, 1604, 1605, 1605.1, 1605.2, 1605.3, 1606, 1607, 1608 REPEAL: 1601, 1602, 1603, 1604, 1605, 1606, 1607, 1608

**Title 22**

01/13/03 ADOPT: 100040, 100041, 100031, 100039, 100042, 100043, AMEND: 100031, 100032, 100033, 10034, 100035, 100036, 100038, 100040, 100041 REPEAL: 100037, 100039, 100043  
 01/07/03 ADOPT: 12203, 12204 AMEND: 12102, 12302, 12304, 12305, 12306, 12401, 12403, 12405, 12501, 12502, 12503, 12504, 12601, 12701, 12709, 12711, 12721, 12808, 12803, 12805, 12821, 12901, 12902, 12903, 14000 REPEAL: 12103, 12104 12201, 12301  
 12/24/02 AMEND: 51503, 51503.2, 51504, 51505.2, 51505.3, 51507, 51507.1, 51507.2, 51507.3, 51509, 51509.1, 51514, 51517, 51521, 51527, 51529, 51535.5  
 12/23/02 ADOPT: 67900.1, 67900.2, 67900.3, 67900.4, 67900.5, 67900.6, 67900.7, 67900.8, 67900.9, 67900.10, 67900.11, 67900.12  
 12/23/02 ADOPT: 64860

12/09/02 ADOPT: 111550  
 12/03/02 ADOPT: 119184 REPEAL: Manual of Policies and Procedures Section 12-225.3  
 12/02/02 AMEND: 66262.54, 66264.71, 66264.72, 66265.71, 66265.72, 66270.30  
 12/02/02 ADOPT: 110411, 110625, 111110, 111120, 111210, 111220, 111230 REPEAL: MPP Sections 12-000, 12-003, and Appendix I  
 11/25/02 ADOPT: 119015, 119019, 119045, 119069, 119076, 119191, and Forms CSS 4476 (09/02), CSS 4477 (09/02), CSS 4478 (09/02), CSS 4479 (09/02), CSS 4480 (09/02), and CSS 4481 (09/02)  
 11/25/02 ADOPT: 66273.6, 66273.80, 66273.81, 99273.82, 66273.83, 66273.84, 66273.85, 66273.86, 66273.87, 66273.88, 66273.89, 66273.90 AMEND: 66271.9, 66273.1, 66273.8, 66273.9  
 11/18/02 ADOPT: 4407.1  
 11/18/02 AMEND: 69103  
 11/05/02 AMEND: 1256-9, 1253. 12-1, 1030(a)-1  
 10/31/02 ADOPT: 64806  
 10/28/02 ADOPT: 110250, 110374, 117016, 117019, 117021, 117025, 117030, 117036, 117042, 117047, 117049, 117052, 117054, 117064, 117074, 117080, 117083, 11785, 117089, 117091, 117094, 117200, 117300, 117301, 117302, 117303, 117400, 117401, 117402, 117403, 117404,  
 10/21/02 ADOPT: 110226, 110242, 110251, 110336, 110337, 110355, 110485, 110547, 110615, 116004, 116018, 116036, 116038, 116042, 116061, 116062, 116063, 116100, 116102, 116104, 116106, 116108, 116110, 116114, 116116, 116118, 116120, 116122, 116124, 116130, 116132, 116  
 10/09/02 ADOPT: 111900, 111910, 111920, 121100, 121120, 121140 REPEAL: (MPP) 12-435  
 10/07/02 AMEND: 5000, 5065, 5102  
 09/30/02 ADOPT: 110550 AMEND: 110413, 113100, 113200, 113300 REPEAL: 12-401.1, 12-104.432  
 09/23/02 AMEND: 66261.9

**Title 22, MPP**

12/03/02 AMEND: 101218.1, 102419, 102421  
 10/28/02 ADOPT: 89202, 89261, 89319, 89323, 89370, 89372, 89374, 89376, 89388, 89400, 89405 AMEND: 87000, 87001, 87005, 87006, 87007, 87009, 87010,

87010.1, 87010.2, 87017, 87018, 87019, 87019.1, 87019.2, 87020, 87021, 87024, 87026, 87027, 87028, 87029, 87031, 9

**Title 23**

01/13/03 ADOPT: 3963  
 12/19/02 ADOPT: 3410, 3410.1, 3410.2, 3410.3, 3410.4, 3410.5  
 12/17/02 ADOPT: 3913  
 12/09/02 AMEND: 3933  
 12/05/02 ADOPT: 510, 511, 512, 513, 514, 515, 516, 517  
 10/29/02 AMEND: 2200  
 09/25/02 AMEND: 645, 717(c), 767(b)  
 09/19/02 AMEND: 3937

**Title 25**

11/07/02 AMEND: 5575  
 11/07/02 AMEND: 1317, 1318, 1319  
 10/01/02 AMEND: 7202, 7234  
 09/30/02 AMEND: Section 6500, Appendix A & B

**Title 28**

12/17/02 ADOPT: 1300.67.60  
 12/16/02 ADOPT: 1300.89  
 11/21/02 AMEND: 1000, 1300.43.3, 1300.43.6, 1300.43.10, 1300.43.13, 1300.43.14, 1300.43.15, 1300.45, 1300.47, 1300.51, 1300.51.1, 1300.51.2, 1300.52.1, 1300.61.3, 1300.65.1, 1300.89, 1300.99  
 11/12/02 ADOPT: 1300.70.4, 1300.74.30 AMEND: 1300.68, 1300.68.01

**Title MPP**

01/14/03 ADOPT: 16-705  
 01/14/03 ADOPT: 11-404, 11-406 AMEND: 11-400, 11-402, 11-403, 11-405  
 12/24/02 AMEND: 84001, 84022, 84061, 84063, 84065, 84800, 84801, 84802, 84802.1, 84808, 84805, 84803, 84804, 84806, 84807.  
 12/19/02 AMEND: 45-101, 45-201, 45-202, 45-203, 45-302, 45-304, 80-310  
 10/21/02 AMEND: 31-001, 31-002, 31-075, 31-401, 31-405, 31-410, 31-420, 31-440, 31-445  
 10/02/02 ADOPT: 40-107.141, .142, .143, .144, .15, .151, .152; 42-302.114, .114(a)-(c), .21(h)(l), .3; 44-133.8; 82-833 AMEND: 40-107.14, 16, .17, .18, .19; 42-301.2; 44-133.51; 82-823  
 09/30/02 AMEND: 63-403.1, 63-405.134, 63-409.122, 63-502.31



# OAL REGULATORY DETERMINATIONS

## STATE OF CALIFORNIA OFFICE OF ADMINISTRATIVE LAW

### 2002 OAL DETERMINATION NO. 7L

(Gov. Code, sec. 11340.5;  
Cal. Code Regs., tit. 1, sec. 123(c))

December 26, 2002

Jim Whalen  
Labor Relations Representative  
California State Employees Association  
1108 "O" Street, 4<sup>th</sup> Floor  
Sacramento, CA 95814

**Re: Request for determination concerning the Stephen P. Teale Data Center's requirements for verification of an employee's or family member's illness to justify the use of sick leave; OAL file no. 00-011**

Dear Mr. Whalen:

You requested the Office of Administrative Law (OAL) to issue a determination as to whether Attendance Restriction Memo, Sample 5, issued by the Stephen P. Teale Data Center (Teale) contains a "regulation" which must be adopted pursuant to the Administrative Procedure Act (APA; Gov. Code sec. 11340 et seq.). In particular, you challenge a paragraph in the sample memo that sets forth information or documentation that an employee must provide in order for the agency head to be able to determine whether the use of sick leave is justified.

In issuing a determination, OAL renders an opinion as to whether a challenged rule is a "regulation" as defined in Government Code section 11342.600, which should have been, but was not adopted pursuant to the APA.

Government Code section 11342.600 defines "regulation" to mean "every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure."

The Attendance Restriction Memo, Sample 5, contains the following paragraph that you specifically challenge:

"1. Sick Leave:

"All absences for health reasons, self or family, must be substantiated with a doctor[']s statement verifying the dates of disability and the date of

release to return to work. The statement must be signed by an authorized physician or licensed practitioner and verify whether you, or your family member, were seen. The physician's or licensed practitioner's name and telephone number must be legible. If you were ill, the statement must report that you were physically unable to work for the period of absence. If you were advised by the medical facility not to be seen in person, the statement must reflect that advice. We will not accept a statement that simply states, 'Patient stated he/she was ill and unable to work'. Failure to bring the required statement upon returning to work will result in determining that you were not legitimately absent and in reporting the unapproved absence as Absence Without Leave (AWOL). Such failure may result in adverse action."<sup>1</sup>

In determining whether a challenged rule is a "regulation" that should be adopted pursuant to the APA, OAL first looks to see whether the challenged rule is merely a restatement of existing law. Applicable in this determination is a statute, a regulation, and a Memorandum of Understanding.

Government Code section 19859 provides in part:

"(a) . . . Each state officer or employee is entitled to [sick] leave with pay, on the submission of satisfactory proof of the necessity for sick leave as provided by rule of the department. [Emphasis added.]"

Pursuant to Government Code section 19859, the Department of Personnel Administration adopted section 599.749 of title 2 of the California Code of

<sup>1</sup> The requester submitted the Attendance Restriction Memo, Sample 5, as an attachment to Teale's Policy No. 3150, which had the last revision date of 11/24/98. OAL is limiting its review and determination to only the paragraph in the Sample 5 memo that was specifically challenged by the requester dealing with sick leave verification.

In its determination request (letter to OAL dated April 18, 2000), CSEA states that the language contained in the challenged Attendance Restriction Memo, Sample 5, is "very similar to [the rules challenged in] the 1998 OAL Determination No. 36" dealing with Attendance Restriction Guidelines issued by the Department of Motor Vehicles. While the challenged provisions may be similar, in OAL's view there are substantial differences in the facts and law applicable in the current determination. Consequently, OAL feels it is not bound by its previous findings in 1998 OAL Determination No. 36 for the following reasons: 1) the challenged provisions are similar, but not the same, 2) the MOU applicable to the 1998 determination is significantly different than the MOU applicable to the current determination, 3) Government Code sections 19570-19572, dealing with adverse actions, were not discussed in the 1998 determination (see discussion on pp. 4-5, *infra*), and 4) the APA exemption found at Government Code section 11340.9, subdivision (f) (Stats. 2000, c. 1060, sec. 5) went into effect after the 1998 determination was issued.

Regulations (CCR) (hereafter “CCR section 599.749”), which states as follows:

“The appointing power shall approve sick leave only after having ascertained that the absence was for an authorized reason and may require the employee to submit substantiating evidence including, but not limited to, a physician’s certificate. If the appointing power does not consider the evidence adequate, the request for sick leave shall be disapproved. [Emphasis added.]”

Additionally, at the time the determination request was accepted for review by OAL there was a binding agreement, a Memorandum of Understanding (MOU), between the California State Employees Association (CSEA) and the State of California.<sup>2</sup> In the MOU, Article 8.2 states in part the following:

“8.2 Sick Leave

“ . . . .

“D. The department head or designee shall approve sick leave only after having ascertained that the absence is for an authorized reason and may require the employee to submit substantiating evidence including, but not limited to, a physician’s or licensed practitioner’s verification. The State recognizes the confidential nature of the relationship between the health care provider and patient. However, such substantiation shall include, but not be limited to, the general nature of the employee’s illness or injury and prognosis (i.e., the anticipated length of the absence, any restrictions upon return to work that prevent the employee from performing the full range of his/her normal work assignment and anticipated future absences). If the department head or designee does not consider the evidence adequate, the request for sick leave shall be disapproved. Upon request, a denial of sick leave shall be in writing stating the reason for denial.

“E. An employee may be required to provide a physician’s or licensed practitioner’s verification of sick leave when:

1. The employee has a demonstrable pattern of sick leave abuse; or
2. The supervisor believes the absence was for an unauthorized reason. [Emphasis added.]”

The MOU was reached pursuant to Government Code sections 3512 through 3524, known as the Ralph C. Dills Act (“Dills Act”). The Dills Act sets forth the statutory law governing relations between the state and its employees. One purpose of the Dills Act is “to promote full communication between the state and its employees by providing a reasonable method of resolving disputes regarding wages, hours, and other terms and conditions of employment between the state and public employee organizations.”<sup>3</sup>

Government Code section 3517.5 of the Dills Act provides, “If agreement is reached between the Governor and the recognized employee organization, they shall jointly prepare a written memorandum of such understanding which shall be presented, when appropriate, to the Legislature for determination.” Government Code section 3517.6 explains that the provisions of a MOU are controlling in cases of conflict with certain statutory provisions, including section 19859 of the Government Code, *supra*.

A comparison of the MOU to Government Code section 19859 and CCR section 599.749 reveals that there is no conflict among the three, thus, all three are controlling in the matter to be addressed in this determination.

In our view, the challenged paragraph in the Sample 5 memo, quoted in full above, contains rules that can be found in Government Code section 19859, CCR section 599.749, or the MOU, or are the only legally tenable interpretation of these legal provisions.<sup>4</sup> For example, CCR section 599.749 and the MOU provide that sick leave shall be approved only after the agency has ascertained that the sick leave was for an authorized reason. The agency may require the employee to submit substantiating evidence, including a physician’s or licensed practitioner’s verification, in order to make that determination. The challenged requirement that such verification be in writing and be legible, including the name and telephone number of

<sup>2</sup> The request for determination was first submitted to OAL on December 22, 1999; however, because there was insufficient information regarding the challenged rule, OAL did not accept the request for review until July 7, 2000, after additional information was submitted by the requester. For purposes of this summary determination letter, OAL reviewed the documents submitted, including the Attendance Restriction Memo, Sample 5, and the MOU as they existed on the date of acceptance. All references to the MOU are to the MOU effective July 1, 1999 through July 2, 2001, for Bargaining Unit #1 because the information submitted by the requester dealt with an employee covered by Bargaining Unit #1 and, according to the declaration submitted by Teale with its response to the determination request, over 95% of Teale employees are within Bargaining Unit #1 represented by CSEA.

<sup>3</sup> Government Code section 3512.

<sup>4</sup> Generally, all state agencies in the executive branch of government and not expressly exempted by statute are required to comply with the rulemaking provisions of the APA. (*Winzler & Kelly v. Department of Industrial Relations* (1981) 121 Cal.App.3d 120, 126–128, 174 Cal.Rptr. 744, 746–747; Gov. Code, secs. 11342.520 and 11346.) Government Code section 11340.9, subdivision (f), provides for such an exemption to the APA. It states that the APA shall not apply to “[a] regulation that embodies the only legally tenable interpretation of a provision of law.”

the physician, is the only way an agency would know which physician to contact to verify and ascertain whether the absence is for an authorized reason. Furthermore, requiring that the physician's verification be more than the statement: "Patient stated he/she was ill and unable to work" is merely another way of restating the MOU provision that "such substantiation shall include, but not be limited to, the general nature of the employee's illness or injury and prognosis." Thus, the verification rules contained in the challenged Sample 5 memo do not further interpret or supplement the provisions in CCR section 599.749 or the MOU.

Additionally, Government Code section 19570 defines "adverse action" as meaning "dismissal, demotion, suspension, or other disciplinary action. . . ." Government Code section 19571 states that adverse action may be taken against any employee for any cause for discipline listed in Government Code section 19572. Section 19572 states as follows:

"Each of the following constitutes cause for discipline of an employee . . . :

"(j) Inexcusable absence without leave."

Thus, the last part of the Sample 5 paragraph, "Failure to bring the required statement upon returning to work will result in determining that you were not legitimately absent and in reporting the unapproved absence as Absence Without Leave (AWOL). Such failure may result in adverse action[.]" is merely a restatement of sections 19570, 19571 and 19572 of the Government Code, as well as CCR section 599.749 and the MOU, e.g., if the appointing power does not consider the evidence adequate, the request for sick leave shall be disapproved.

In summary, verification of sick leave usage and submission of substantiating evidence is required by Government Code section 19859, title 2, CCR, section 599.749, and the legally binding MOU provisions. The challenged sick leave paragraph of the Attendance Restriction Memo, Sample 5, does not further interpret or supplement these provisions of law. Thus, the requirements for verifying sick leave and submitting substantiating evidence as found in Sample 5 are not "regulations" required to be adopted pursuant to the APA. The rules contained in the challenged paragraph of Sample 5 are merely restatements of law or are the only legally tenable interpretation of these legal provisions.<sup>5</sup>

<sup>5</sup> Section 123 of title 1 of the CCR provides in part the following:

Sincerely,

SHEILA R. MOHAN  
Acting Director and Chief Counsel

DEBRA M. CORNEZ  
Senior Counsel

KATHLEEN EDDY  
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cc: Carlos Ramos, Director  
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"(b) OAL shall not accept for filing any request for determination if OAL finds that the state agency rule being challenged:

- (1) has been superseded;
- (2) has expired by its own terms;
- (3) has been declared in writing by the state agency under penalty of perjury, in accordance with Code of Civil Procedure Section 2015.5, to have been rescinded or to no longer be in effect;
- (4) has been nullified by a court in a judgment that has become final;
- (5) is contained in a regulation adopted pursuant to the APA;
- (6) is contained in a California statute;
- (7) is clearly within the scope of an express statutory exemption from the APA; or
- (8) is the same rule, or is substantially the same (i.e., has the same effect) as a rule from the same state agency, on which OAL has already issued a determination.

"(c) If, after accepting a request for determination, OAL finds that the challenged state agency rule falls within subsection (b), OAL may at any time issue a summary determination letter instead of a determination pursuant to sections 124, 125, and 126. Any summary determination letter shall be issued pursuant to section 127. [Emphasis added.]"

This summary determination letter is being issued pursuant to section 123, subsection (c), because the challenged agency rule falls within section 123, subsections (b)(5), (6) and (7), i.e., the rules set forth in the challenged paragraph are contained in the Government Code, CCR section 599.749, or the MOU, or fall within the APA exemption of being the only legally tenable interpretation of these laws.

